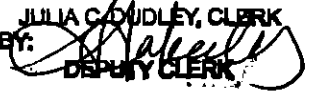


JUN 06 2011

JULIA C. DUDLEY, CLERK
BY:  DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

KIMBERLY DAWN NESTER,

Plaintiff,

v.

MICHAEL J. ASTRUE,
COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

Civil Action No. 7:10-CV-00332

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

By: Judge James C. Turk
Senior United States District Judge

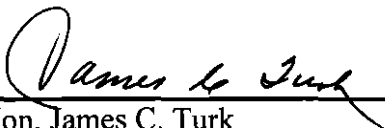
Plaintiff Kimberly Dawn Nester brings this action pursuant to 42 U.S.C. §§ 416 and 423 for review of the Commissioner of Social Security's final decision denying her claims for disability insurance benefits under the Social Security Act. The Court referred the matter to United States Magistrate Judge B. Waugh Crigler for a Report and Recommendation, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge subsequently filed a report finding that the Administrative Law Judge ("ALJ") did not give appropriate consideration to the opinion of one of Plaintiff's treating physicians, Dr. Cheek. The Magistrate Judge, therefore, recommended that the Commissioner's decision be remanded, and that the Plaintiff's motion for summary judgment (Dkt No. 16) be granted.

Following the issuance of the Report and Recommendation, the parties were entitled to note any objections within fourteen (14) days. Fed. R. Civ. P. 72(b) (2011). The Court received no such objections. As a result, and having reviewed the Magistrate Judge's Report and Recommendation and pertinent portions of the record, the Court agrees with the Magistrate Judge's recommendation. Accordingly, it is hereby **ORDERED** and **ADJUDGED** that the Magistrate Judge's Report and Recommendation is **ADOPTED**, the Commissioner's decision is

REMANDED, the Commissioner's Motion for Summary Judgment (Dkt. #19) is **DENIED**, and Nester's Motion for Summary Judgment (Dkt. #16) is **GRANTED**.

The Clerk of Court is directed to strike the case from the Court's active docket. The Clerk is further directed to send copies of this Order to counsel of record for all parties.

ENTER: This 6th day of June, 2011.



Hon. James C. Turk
Senior United States District Judge